IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

OP.No. 8051 of 1998(H)

PETITIONERS:
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1. **K.P.MOHAMMED @ BAVA, S/O. ALI,**
   ITTIKA PARAMBIL PALAKKAL HOUSE,
   PO. CHAMRAVATTOM TIRUR,
   MALAPPURAM DISTRICT.

2. **I.P. NAFEESA, D/O. ALI, -DO- -DO-**

3. **I.P. KUNHIPPA, S/O. ALI -DO- -DO-**

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS:
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1. **STATE OF KERALA, REP.BY**
   THE CHIEF SECRETARY, SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE DISTRICT COLLECTOR,**
   MALAPPURAM.

3. **THE REVENUE DIVISIONAL OFFICER,**
   TIRUR, MALAPPURAM DISTRICT.

4. **KOLANGARA PADMAVATHI AMMA,**
   VETTAM PALLIPRAM, P.O.,
   CHAMRAVATTAM, TIRUR
   MALAPPURAM DISTRICT.

BY GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN
SRI.K.RAMACHANDRAN
SRI.K.MANU RAJ

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.13864/1998 IN OP. NO.8051/1998

DISMISSED

09.03.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE EXTRACT OF THE ENTRIES IN REVENUE REGISTER OF R.S. 296/9.

EXT.P2:- COPY OF THE SURVEY SKETCH OF FIELD NO.296 ISSUED BY DY.TAHSILDAR.

EXT.P3:- COPY OF THE REGD. DOCUMENT DT.8.12.47.

EXT.P4:- COPY OF THE ASSIGNMENT DEED DT.18.10.60.

EXT.P5:- COPY OF THE ORDER NO.L.DIS 4130/95 RDO PERINTHALMANNA.

EXT.P6:- COPY OF THE ORDER NO.REF.B.335/96 DT.23.9.97 BY RDO TIRUR.

EXT.P7:- COPY OF THE REPRESENTATION BY THE 3RD PETITIONER TO THE HONOURABLE MINISTER FOR REVENUE DT.16.12.97.

RESPONDENTS EXHIBITS

EXT.R4(a):- COPY OF THE APPLICATION FILED BY THE 4TH RESPONDENTS BEFORE THE RDO , PERINTHALMANNA.

EXT.R4(b):- COPY OF THE LAND REVENUE RECEIPT DT.15.12.97.

EXT.R4(c):- COPY OF THE APPLICATION DT.31.1.98 SUBMITTED BY THE 4TH RESPONDENT BEFORE THE 3RD RESPONDENT.

/TRUE COPY/

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S. SIRI JAGAN, J.

O.P.NO. 8051 OF 1998

DATED THIS THE 9th DAY OF MARCH, 2007

JUDGMENT

The bone of contention in this original petition between the petitioners on the one hand and the 4th respondent on the other, is an unassessed tank which has been registered in the name of 4th respondent by 3rd respondent under the Malabar Land Registration Act 1895. The contention of the petitioners is that this tank actually is included as their properties going by their title deeds. They would also submit that as is evident from Ext.P6 itself, the 4th respondent has not produced any documents which would show that the tank in question is the property belonging to the 4th respondent. In the course of arguments the petitioners also raised a contention that without a finding by a civil Court regarding the title to a property, the RDO does not have jurisdiction to register the land under the Malabar Land Registration Act, in favour of the 4th respondent since there is genuine dispute regarding title and the R.D.O himself has stated that no document proving title of the 4th respondent has been produced before him.

2. On the other hand the learned counsel for the 4th

respondent would submit that although in Ext.P6 order it has not been mentioned, the title deeds belonging to the 4th respondent do positively show that the tank is included in the title deeds of properties belonging to her. The learned counsel for the 4th respondent would also submit that the jurisdiction of the R.D.O under the Land Registration Act is only to register the tank for the purpose of assessment of the land. It is also his contention that he would further submit that the land has been registered in the name of the 4th respondent and tax is being collected from the 4th respondent in respect of the tank in question.

3. I have considered the rival contentions in detail. The learned counsel for the petitioners would contend that Ext.P6 order has been passed behind the back of the petitioners without any notice to them. The contention is that Exts. P3 and P4 documents of title would show that the properties in Re-survey No.296/9 belongs to the petitioners which is the Re-survey number of the tank also. They would point out that in Ext.P6 itself it has been specifically held that the Tahsildar has in his report stated that the 4th respondent has not produced any documents to show that the unassessed tank belongs to the 4th respondent.

4. On a perusal of Ext.P6 it is clear that the tank comprises of 25 cents in Re-Survey No.296/9 , it is also stated in Ext.P6 order that the 4 th respondent has not produced any documents of title in

respect of the unassessed tank. But Tahsildar has reported that the part of the land is in the possession of the 4th respondent. However, Ext.P6 specifically states that the unassessed tank is adjacent to the property in the possession of the 4th respondent in Re-survey Nos.296/9 and 10 AC. Inspite of the same, the RDO has come to the conclusion that the unassessed tank in Re-survey No.296/9 belongs absolutely to the 4th respondent.

5. From the above discussion, I am not satisfied that Ext.P6 has been passed properly. Further the petitioners have filed Ext.P7 objection in this respect to the Revenue Minister. Therefore apparently there is a dispute regarding the title to the unassessed tank. In the said circumstances, I am not satisfied that without resolving the same the RDO could not have passed Ext.P6 and therefore Ext.P6 is liable to be set aside. Accordingly, I set aside Ext.P6 order and remand the matter to the 3rd respondent for fresh consideration in accordance with law after hearing the petitioners and the 4th respondent. The parties would be free to take up such contentions as are available to them under law including objection regarding jurisdiction of the R.D.O to pass orders under the Malabar Land Registration Act in respect of the properties ' title to which is in dispute which shall be considered by the RDO and an order dealing with all contentions passed. I also make it clear that it would also be open to either parties to resort to the remedy by way of filing

civil suit to establish their title, if they so wish.

Original petition is disposed of as above.

S. SIRI JAGAN, JUDGE

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